

126 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Western Systems Power Pool

Docket Nos. ER91-195-054
EL07-69-004

Western Systems Power Pool Agreement

ORDER ACCEPTING COMPLIANCE FILING AND TERMINATING SECTION 206
PROCEEDING

(Issued March 3, 2009)

1. On September 29, 2008, the Commission issued an order directing WSPP, Inc. (WSPP)¹ to submit a compliance filing, with proposed revisions to the WSPP Agreement to allow for the incorporation in the WSPP Agreement of company-specific rate schedules for mitigated members.² On November 25, 2008, WSPP submitted a compliance filing with revisions to the WSPP Agreement. In this order we accept the compliance filing and terminate the proceeding instituted in Docket No. EL07-69 under section 206 of the Federal Power Act (FPA).³

Background

2. The WSPP Agreement was initially accepted by the Commission on a non-experimental basis in 1991,⁴ and provided for flexible pricing for coordination sales and

¹ Western Systems Power Pool, Inc. changed its name to WSPP, Inc., effective March 16, 2007. *WSPP, Inc.*, Docket No. ER07-635-000 (May 7, 2007) (unpublished letter order).

² *Western Sys. Power Pool*, 124 FERC ¶ 61,300 (2008) (September 29 Order).

³ 16 U.S.C. § 824e (2006).

⁴ *Western Sys. Power Pool*, 55 FERC ¶ 61,099 (Initial Order), *order on reh'g*, 55 FERC ¶ 61,495 (1991), *aff'd in relevant part and remanded in part sub nom. Environmental Action and Consumer Federation of America v. FERC*, 996 F.2d 401 (D.C. Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994). Prior to 1991, the WSPP

(continued...)

transmission services. In accepting the WSPP Agreement, the Commission rejected WSPP's proposed system of price caps based on the costs of its highest cost participants, and instead developed energy and transmission rate ceilings based on the costs of a subset (18 sellers) of the original parties to the WSPP Agreement.⁵ The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's acceptance of the WSPP Agreement.

3. On June 21, 2007, the Commission instituted a section 206 proceeding to investigate whether the WSPP Agreement ceiling rate continued to be just and reasonable for a public utility seller in markets in which such seller was found to have or was presumed to have market power.⁶ The Commission limited the investigation to: (1) the justness and reasonableness of WSPP Agreement cost-based ceiling rates for coordination energy sales by public utility sellers that are found to have, or are presumed to have, market power; and (2) if the existing WSPP Agreement rates are unjust and unreasonable for such sellers, how the Commission should establish a just and reasonable rate. The Commission sought comment on whether the Commission should set a just and reasonable "up to" rate based on: (1) individual sellers' costs; (2) a new agreement-wide "up to" rate based on the costs of a representative group of WSPP sellers (including how such agreement-wide rate should be calculated); or (3) a different methodology.

4. On February 21, 2008, the Commission found that it is not just and reasonable to allow such a seller to continue to use the WSPP-wide "up to" demand charge as a ceiling rate, unless the seller can cost-justify the use of the "up to" demand charge based on its own fixed costs.⁷ Accordingly, the Commission directed all sellers under the WSPP Agreement that lack market-based rate authorization, or that have lost or relinquished their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), who wish to continue transacting under the WSPP Agreement, to make a filing within 60 days of the date of issuance of that order⁸ providing cost justification to demonstrate that use of the WSPP Agreement "up to" demand charge is just and reasonable for that particular seller. The Commission stated that, if a seller

Agreement was used for three years on an experimental basis. *See Western Sys. Power Pool*, 50 FERC ¶ 61,339 (1990) (extending the initial two-year period for an additional year).

⁵ *See* Initial Order, 55 FERC ¶ 61,099 at 61,321-25.

⁶ *Western Systems Power Pool*, 119 FERC ¶ 61,302, at P 9 (2007) (Order Instituting Hearing).

⁷ *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008) (February 21 Order).

⁸ The Commission stated that such changes should be filed pursuant to section 35.13 of the Commission's regulations. 18 C.F.R. § 35.13 (2008).

provides cost support demonstrating that the “up to” demand charge under the WSPP Agreement does not exceed the demand charge that the seller can cost-justify based on its own fixed costs, the seller may continue to use the WSPP Agreement. Otherwise, such seller must file a separate stand-alone rate schedule, to be effective as of the date of the compliance filing, that is cost-justified based on the individual seller’s own costs. In the latter case, such seller could propose to use the non-rate terms and conditions of the WSPP Agreement, but would have to include those provisions as part of its stand-alone rate schedule.

5. On March 24, 2008, Arizona Public Service Company (APS) and Xcel Energy Services Inc. (Xcel) filed a joint request for reconsideration of the February 21 Order, requesting that the Commission adopt an alternative implementation of the February 21 Order. They proposed that the Commission allow a seller to incorporate company-specific demand charge caps into the WSPP Agreement, either by cross-reference to a specific cost-based tariff, or by incorporation of company-specific rate schedules into the WSPP Agreement itself.

6. On July 17, 2008, the Commission denied APS’ and Xcel’s request for reconsideration with respect to their proposal to cross reference company-specific cost-based demand charges in the WSPP Agreement.⁹ The Commission stated that this proposal was not consistent with the Commission’s requirements that public utilities post full and complete rate schedules and tariffs, rather than incorporating rates by reference. However, with respect to APS’ and Xcel’s proposal that the Commission permit company-specific rate schedules to be incorporated into the WSPP Agreement, the Commission determined that, because this proposal would require amendment of the WSPP Agreement, interested parties should be given the opportunity to submit comments on the proposal.

7. Reply comments were submitted by WSPP, APS, Xcel, and El Paso Electric Company. All the comments supported the proposal to amend the WSPP Agreement to incorporate company-specific rate schedules, arguing that doing so would allow mitigated members and WSPP counterparties to continue to reap the benefits of efficiency and coordination of the WSPP standard terms and conditions.

8. In the September 29 Order, the Commission agreed with the intervenors that allowing company-specific rate schedules to be incorporated into the WSPP Agreement will retain the efficiencies and convenience of the WSPP Agreement, and noted that WSPP supported the proposal. Accordingly, the Commission directed WSPP to make a

⁹ *Western Sys. Power Pool*, 124 FERC ¶ 61,056 (2008).

compliance filing, within 60 days of the date of that order, with proposed revisions to the WSPP Agreement to allow for the incorporation in the WSPP Agreement of company-specific rate schedules for mitigated members.

9. On November 25, 2008, WSPP submitted the proposed revisions. WSPP proposes to revise the WSPP Agreement to state that the WSPP-wide rate caps: (i) are subject to the submission of cost justification by the applicable seller, and acceptance by the Commission, or (ii) are inapplicable if the seller has filed, and the Commission has accepted, a company-specific cost-based rate schedule applicable only to that seller. WSPP proposes that a new Schedule Q be added to the WSPP Agreement and that any, Commission-approved company-specific rate schedule for mitigated WSPP members would be incorporated into Schedule Q. WSPP requests an effective date of February 1, 2009.

10. WSPP proposes that mitigated public utility members who want to file company-specific rate schedules may do so, with a statement that the rate schedule, if accepted by the Commission, will be incorporated into the WSPP Agreement. WSPP states that, once the rate schedule is accepted by the Commission, WSPP will submit a ministerial filing to incorporate that schedule into Schedule Q of the WSPP Agreement, with the effective date of the date the Commission accepted the company-specific rate schedule. If a company-specific rate schedule is subsequently modified, whether through Commission hearing and settlement procedures or by a filing by the WSPP member under section 205 of the FPA,¹⁰ WSPP states that it will submit another ministerial filing to incorporate the modifications into Schedule Q with the new effective date. WSPP states that such filings will be ministerial only and that WSPP would bear no responsibility for substantive justification of any company-specific rates. WSPP states that the Commission has permitted the use of a similar filing procedure when an independent Regional Transmission Organization (RTO) incorporates rates of its transmission-owning members into the applicable RTO tariff.¹¹

11. Notice of WSPP's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 75,425 (2008), with protests or interventions due on or before December 16, 2008. None was filed.

¹⁰ 16 U.S.C. § 824d (2006).

¹¹ Citing *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,266 (2008) (accepting Southwest Power Pool, Inc.'s (SPP) tariff revisions to incorporate a change to formula rates for the Southwestern Public Service Company pricing zone); *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,134 (2005) (accepting SPP's tariff revisions to incorporate a rate change for the Westar Energy, Inc. pricing zone); *Southwest Power Pool, Inc.*, 101 FERC ¶ 61,264 (2002) (accepting SPP's tariff revisions to incorporate a rate change for the Southwestern Power Administration pricing zone).

Discussion

12. We accept WSPP's proposed tariff revisions.¹² We find that they ensure just and reasonable rates for customers of mitigated members, and still enable mitigated members to retain the efficiencies and convenience of the WSPP Agreement.

13. In the Order Instituting Hearing, the Commission explained that it was instituting the instant section 206 investigation because of a concern that the evolution and use of the WSPP Agreement ceiling rate and the evolution of competitive markets have resulted in circumstances where the WSPP rate may no longer be just and reasonable for sellers that are found to have market power or are presumed to have market power in a particular market. In light of our determination that the proposed compliance filing is just and reasonable, we will terminate the section 206 proceeding instituted in Docket No. EL07-69.

The Commission orders:

(A) WSPP's compliance filing is hereby accepted, effective February 1, 2009, as discussed in the body of this order.

(B) The section 206 proceeding in Docket No. EL07-69 is hereby terminated.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² WSPP, Rate Schedule FERC No. 6, Second Revised Sheet No. 80 (superseding First Revised Sheet No. 80), Third Revised Sheet No. 81 (superseding Second Revised Sheet No. 81), Second Revised Sheet No. 84 (superseding First Revised Sheet No. 84), Original Sheet No. 84A, Fifth Revised Sheet No. 89 (superseding Fourth Revised Sheet No. 89), Third Revised Sheet No. 89A (superseding Second Revised Sheet No. 89A), Original Sheet No. 90A.